

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
Superior Concrete Materials, Inc.	:	U.S. EPA Docket No. CWA-03-2022-0031DN
1220 12th Street, SE	:	
Washington, D.C. 20003	:	Administrative Order on Consent Pursuant to
Respondent.	:	Section 309(a)
	:	of the Clean Water Act
1721 South Capitol Street SW	:	
Washington, D.C. 20003	:	
	:	
Facility.	:	
	:	
	:	
	:	

ADMINISTRATIVE ORDER ON CONSENT

I. PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency (“EPA”) has made the following findings of fact and issues this Administrative Order on Consent (“AOC”) pursuant to the authority vested in the Administrator of EPA under Section 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Enforcement and Compliance Assurance Division, Region III.
2. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain sections of the Act, in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an order requiring such person to comply with such section or requirement.

II. JURISDICTION

3. The EPA has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

III. **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

4. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this AOC.
5. Except as provided in Paragraph 4, above, Respondent neither admits nor denies the factual allegations set forth in this AOC.
6. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution and issuance of this AOC.
7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.
8. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.
9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that storm water discharges are “point sources” subject to NPDES permitting requirements under section 402(a) of the CWA, 33 U.S.C. § 1342(a).
10. “Stormwater” is defined as “storm water runoff, snow melt runoff and surface water runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
11. “Stormwater discharge associated with industrial activity” is defined as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant” 40 C.F.R. § 122.26(b)(14). The term includes storm water discharges from facilities classified as Standard Industrial Classification (“SIC”) 3273. 40 C.F.R. § 122.26(b)(14)(ii).
12. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
13. In accordance with Section 402(a) of the Act, 33 U.S.C. § 1342(a), EPA issued the 2015 NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“MSGP”), effective June 4, 2015.

14. Superior Concrete Materials, Inc. (“Respondent”) is a corporation doing business in the District of Columbia and therefore, is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
15. At all times relevant to this AOC, Respondent was the owner and operator of the facility located at 1601 South Capitol St., Washington, D.C. and was and is the owner and operator of the facility located at 1721 South Capitol St., Washington, D.C.
16. Respondent’s facility, located at 1721 South Capitol Street SW (“1721 South Capitol St. Facility”), Washington, D.C. was granted authorization to discharge stormwater associated with industrial activity under MSGP No. DCR053056, on January 3, 2018.
17. Respondent’s facility, located at 1601 South Capitol Street SW (“1601 South Capitol St. Facility”), Washington, D.C. was granted authorization to discharge stormwater associated with industrial activity under MSGP No. DCR053024, on October 1, 2015.
18. On February 16, 2017, EPA issued the 2017 NPDES General Construction Permit (“2017 CGP”). The 2017 CGP requires permit coverage prior to commencement of construction activities.
19. On February 8, 2018, Respondent submitted a Notice of Intent (“NOI”) for authorization to discharge storm water under the 2017 CGP, at the 1721 South Capitol St. Facility. The NOI documented a project start date of December 11, 2017. Authorization to discharge was granted under CGP No. DCR10003Y, on February 19, 2018. Respondent submitted a Notice of Termination (“NOT”) on September 7, 2018.
20. Stormwater discharges from the 1601 South Capitol St. Facility and 1721 South Capitol St. Facility drain into the municipal separate storm sewer system (“DC MS4”) to the Anacostia River. The Anacostia River is a “waters of the United States” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
21. On March 12, 2018, EPA and representatives from the D.C. Department of Energy and the Environment (“DOEE”) conducted a compliance evaluation inspection (“CEI”) at the 1601 South Capitol St. Facility.

Count 1

Discharging Stormwater Associated with Construction Activity Without NPDES Permit Coverage

22. The information and allegations in the preceding Paragraphs of this AOC are incorporated herein by reference.
23. From December 11, 2017, to February 19, 2018, for a total of seventy (70) days, the 1721 South Capitol St. Facility engaged in construction that included land clearing and grading activities.

24. During that time period construction activity associated stormwater discharges traveled through the municipal separate storm sewer to the Anacostia River, a WOTUS.
25. The construction activity at the 1721 South Capitol Street Facility required coverage under CGP No. DCR10003Y because they disturbed approximately 6 acres of land or greater.
26. From December 11, 2017 until February 19, 2018, Respondent did not obtain authorization to discharge stormwater from its facility, under the 2017 CGP. Authorization to discharge under the 2017 CGP was granted on February 19, 2018.
27. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source into waters of the U.S. except in compliance with a permit issued pursuant to an NPDES program under Section 402 of the Act, 33 U.S.C. § 1342.
28. From the period between December 11, 2017 and February 19, 2018, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) by discharging pollutants without a permit.
29. In failing to comply with 301(a) of the CWA, 33 U.S.C. § 1311(a), Respondent is subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 2

Discharging Stormwater Associated with Industrial Activity Without NPDES Permit Coverage

30. The information and allegations in the preceding Paragraphs of this AOC are incorporated herein by reference.
31. From September 2, 2015 to October 1, 2015, for a total of thirty (30) days, the 1601 South Capitol St. Facility engaged in industrial activity that required NPDES permit coverage.
32. During that time period industrial activity at the 1601 Capital Street Facility which resulted in stormwater discharges that traveled through the municipal separate sewer to the Anacostia River, a WOTUS.
33. Based on the industrial activity conducted and EPA's CEI, EPA determined that the industrial activity at the 1601 Capital Street Facility required coverage under the 2015 MSGP.
34. From September 2, 2015 to October 1, 2015, Respondent engaged in industrial activity without first obtaining authorization to discharge stormwater from its facility under the

2015 MSGP. Authorization to discharge under the 2015 MSGP was granted on October 1, 2015.

35. Section 402, 33 U.S.C. § 1342, Section 301 of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source into waters of the U.S. except in compliance with a permit issued pursuant to an NPDES program under Section 402 of the Act, 33 U.S.C. § 1342.
36. From the period between September 2, 2015 to October 1, 2015, Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311(a) by discharging pollutants without a permit.
37. In failing to comply with 301 of the CWA, 33 U.S.C. § 1311(a), Respondent is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319(g).

Count 3
Failure to Comply with NPDES Permit Provisions

38. The information and allegations in the preceding Paragraphs of this AOC are incorporated herein by reference.
39. During the March 12, 2018 CEI, EPA identified violations of NPDES Permit conditions related to sampling, self-inspection, pollution prevention and good housekeeping requirements at the 1601 South Capitol St. Facility, as detailed in Appendix 1.
40. During the periods of time specified in Appendix 1, Respondent failed to adequately comply with provisions of the NPDES Permit, in violation of Section 301 of the CWA, 42 U.S.C. § 1311, for violating conditions of the applicable NPDES permits issued under Section 402 of the CWA, 42 U.S.C. § 1342.

IV. Order for Compliance

Therefore, the Respondent is hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), to do the following:

41. Respondent will submit to EPA under this AOC the following information concerning the 1721 South Capitol Street Facility within 30 days of the Effective Date of this AOC:
 - a. Standard Operating Procedure (SOP) of the Mapistry Environmental Compliance Platform (“Mapistry”) and its application to maintain compliance with the MSGP and SWPPP at the 1721 South Capitol Street Facility;

- b. For the period commencing with the installation of Mapistry through December 31, 2021:
 - 1. Two copies of each Quarterly Visual Assessment and Routine Facility Inspection; and
 - 2. One copy of each STI SP001 Annual SPCC Inspection and SPCC Monthly Inspection;
- c. A list identifying any CWA non-compliance in the second and third quarters of 2021 and a description of actions taken to address the non-compliance
- d. One copy of sampling results from March 19, 2021, stormwater event;
- e. One screen shot copy of the Dashboard to show compliance, non-compliance and corrective action responses with the stormwater self-inspection program; and
- f. Explanation of identified issues and steps taken to correct any deficiencies related to:
 - 1. Concrete at entrance of BioRetention pond;
 - 2. Track out from Load N Go;
 - 3. Solids getting into BioRetention pond via stormwater trenches; and
 - 4. Sand/solids track out from material delivery.
- g. In all submissions, Respondent shall include a CWA compliance certification stating, as applicable, either:
 - i. “Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with all requirements of its NPDES permit and the CWA at the Facility”,
 - or
 - ii. “Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with all requirements of its NPDES permit and the CWA at the Facility, except as follows. . .”. This certification must refer to the list in subparagraph c, above.

V. PROCEDURES FOR SUBMISSIONS

42. All documents required to be submitted by this AOC and any Request for Termination shall be accompanied by a certification signed by a responsible officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

Date: _____

43. Any notice, submission, certification, data presentation, or other document submitted by Respondent to EPA pursuant to this AOC shall be sent via-email transmission to the attention of:

Email: Hopkins.Ingrid@epa.gov

Ingrid H. Hopkins
NPDES Section (3ED32)
U.S. EPA, Region III

and

Email: Frankenthaler.Douglas@epa.gov

Douglas Frankenthaler
Asst. Regional Counsel
U.S. EPA, Region III

All information submitted shall be submitted in a widely recognized electronic format.

**VI. CERTIFICATION OF COMPLIANCE AND
REQUEST FOR TERMINATION OF AOC**

44. Upon completion of all items required in Section IV of this AOC, Respondent shall submit to EPA a Certification of Compliance and Request for Termination of this AOC. Such certification and request shall include:
- a. a certification that Respondent has maintained compliance with this AOC for the term of this AOC and
 - b. all necessary documentation, including photo documentation as appropriate, to support a finding that Respondent has complied with Section IV of this AOC.
 - c. If, following review of any Certification of Compliance and Request for Termination of this AOC, EPA agrees that Respondent has adequately complied with all requirements of this AOC, then EPA may, in its unreviewable discretion, provide written notification of termination of this AOC.

VII. GENERAL PROVISIONS

45. Issuance of this AOC is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any rights and remedies available to it under the CWA, 33 U.S.C. §§ 1251-1388, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this AOC, following its effective date (as defined below).
46. This AOC does not constitute a waiver or modification of the terms or conditions of the Respondent's Permit. Compliance with the terms and conditions of this AOC does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law, regulation or permit.
47. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this AOC, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
48. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
49. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this AOC and to execute and legally bind the party.
50. The provisions of this AOC shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of Respondent.
51. Respondent certifies that to its knowledge, any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this AOC are in any material respect, false or inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

52. Respondent may assert a business confidentiality claim covering part or all of the information which this AOC requires it to submit to EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. The EPA will disclose information submitted under a confidentiality claim only as provided in Part 2 Subpart B of Title 40 of the C.F.R. If Respondent does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to Respondent.
53. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the work required by this order; is restitution, remediation, or required to come into compliance with the law.

VIII. EFFECTIVE DATE

54. This AOC will become effective upon the Respondent's receipt of a fully executed copy of this AOC.

FOR RESPONDENT SUPERIOR CONCRETE MATERIALS, INC.

Date: 3-9-22

By: Todd Martineau
Todd Martineau
Vice President/General Manager
Superior Concrete Materials, Inc.
1220 12th Street, SE
Washington, D.C. 20003

I/M/O Superior Concrete Materials, Inc.
EPA Docket No. CWA-03-2022-0031DN

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

By: _____

Karen Melvin
Director, Enforcement & Compliance Assurance
Division
U.S. Environmental Protection Agency, Region III

Appendix 1
Superior Concrete Materials, Inc.
Table of Violations

Facility/Permit	Date	Violations
DCR050324 1601 South Capitol St. SW Washington, DC MSGP Auth: October 1, 2015	March 2018	MSGP Permit, Part 8.E.2.1 (Failure to implement good housekeeping controls at aggregate stockpile bins based on observations of aggregate stockpiles spills outside of storage bins made during inspection and lack of implementation of required controls)
	September 2015	MSGP Permit, Part 3.1.2 (Failure to conduct quarterly stormwater inspections during dry weather for this quarter)
	February 2015	40 C.F.R. § 122.28 (Failure to timely submit NOI)
	October 2015-March 2018	MSGP Permit, Part 3.2.1 (Failure to collect all quarterly stormwater samples and perform required visual assessments for each of three permitted outfalls)
	March 2018	MSGP Permit, Part 8.G.4.2.10 (Failure to maintain capacity of settling basins based on observations made during inspection showing capacity limited by hardened concrete in the basins)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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CERTIFICATE OF SERVICE

I certify that on _____, the original and one (1) copy of the foregoing *Administrative Order on Consent*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email and UPS to:

Todd Martineau
Vice President and
General Manager
Superior Concrete Materials, Inc.
1220 12th Street SE
Washington, DC 20003
tmartineau@us-concrete.com

Paul E. Gutermann
9901 River View CT
Potomac, MD 20854
301.765.8919
pgutermann@gmail.com

Copies served via email to:

Douglas Frankenthaler
Assistant Regional Counsel
ORC – 3RC40
U.S. EPA, Region III
frankenthaler.douglas@epa.gov

Ingrid H. Hopkins
Enforcement Officer
ECAD – 3ED32
U.S. EPA, Region III
Hopkins.ingrid@epa.gov

Dated: _____

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III